

EXECUTIVE OFFICERS SUMMARY REPORT  
9:00 a.m., November 7, 2002  
Wharfinger Building  
#1 Marina Way  
Eureka, CA

ITEM: 1

SUBJECT: Consideration of the Issuance of Waste Discharge Requirements or a Waiver of Waste Discharge Requirements For Timber Harvesting Operations in the Elk River Watershed by the Pacific Lumber Company

### **INTRODUCTION**

The Pacific Lumber Company, the Scotia Pacific Company LLC, and Salmon Creek Corporation, all subsidiaries of MAXXAM, Inc., (hereinafter collectively referred to as the Discharger) together own approximately 21,000 acres (76%) of the 27,500 acre Elk River watershed. The Elk River, which is tributary to Humboldt Bay, is located southeast of Eureka. The Discharger conducts timber harvesting, forestry management, road construction and maintenance, and related activities on the lands within the Elk River watershed within its ownership.

Evidence in our files supports the conclusion that timber operations in this watershed have resulted in significant discharges of earthen materials that have adversely affected downstream beneficial uses, contribute to nuisance flooding conditions, and that proposed operations will continue to discharge earthen material to Elk River. Therefore, on August 5, 2002, the Executive Officer requested the Discharger submit a Report of Waste Discharge (ROWD) for wet weather operations within the Elk River watershed. On September 30, 2002, the Discharger submitted a ROWD. Therefore, a public meeting has been scheduled for November 7, 2002, for the North Coast Regional Water Quality Control Board (Regional Water Board) to consider the issuance of waste discharge requirements or a waiver of waste discharge requirements for timber harvesting operations in the Elk River watershed by the Pacific Lumber Company.

The ROWD encompasses thirteen timber harvest plans (THPs) that drain to the Elk River or tributaries to the Elk River. These thirteen THPs represent approximately 1,000 acres of timber harvest with the majority utilizing clearcut harvesting. The Elk River is listed as sediment impaired under Section 303(d) of the federal Clean Water Act.

### **DISCUSSION**

Pacific Lumber Company's ownership in the Elk River watershed is summarized below in Table 1. The portions of the watershed that are not owned by Pacific Lumber Company are largely owned by numerous landowners with smaller parcels in the lower reaches of each watershed and Simpson Resource Management Company and Bureau of Land Management (BLM) in the South Fork Elk River watershed.

**Table 1. Pacific Lumber Company ownership in Elk River.**

Watershed	Watershed Size (acres)	Ownership (acres)	Percent of Watershed
North Fork Elk River	14,336	13,189	92%
South Fork Elk River	13,177	~8,000 <sup>1</sup>	~61%

<sup>1</sup> Approximate South Fork Elk River ownership acreage.

As mentioned above, the Pacific Lumber Company conducts timber harvesting, forestry management, road construction and maintenance, and related activities on the lands within its ownership. During the decade from 1987 to 1997, Pacific Lumber significantly increased the rate of timber harvest on its ownership over the rate of harvest that occurred during the period from 1974 to 1987 (Table 2).

**Table 2. Rate of harvest for recent decade (1987-1997) and previous photointerpretive period (1974-1987).**

Watershed	Total Watershed Ownership (acres)	1974-1987			1987-1997		
		Total Harvested Acres (ac/period)	Annual Rate of Harvest (% ownership/yr) (ac/yr)		Total Harvested Acres (ac/period)	Annual Rate of Harvest (ac/yr) (% ownership/yr)	
North Fork Elk River	13,189	932	72	0.5%	5,035	504	3.8%
South Fork Elk River <sup>1</sup>	~8000	-	-	-	-	-	-

<sup>1</sup> South Fork harvest history is currently unavailable.

Corresponding with the increased rates of harvesting and other harvest-related activities, residents downstream of this watershed and Regional Water Board staff began noticing adverse impacts to surface waters and their beneficial uses within this watershed, resulting from increased inputs of sediment. For example, the residents who were obtaining domestic and agricultural supply water from these watercourses began noticing increased silt in their drinking water and around their water intakes. Residents reported that water became very turbid even during minor storms, and the intensity and duration of flooding increased significantly. During the winters of 1995/1996 and 1996/1997, in particular during the latter winter, numerous large landslides occurred within this watershed, delivering significant quantities of sediment to watercourses within this watershed.

On October 22, 1997, the Discharger submitted a workplan, prepared by Pacific Watershed Associates, identifying seven locations where approximately 7,160 cubic yards of soil and organic debris were discharged into the North Fork Elk River and its tributaries where cleanup was not feasible or recommended. The workplan identified eleven locations where soil was excavated to prevent the discharge of approximately 2,728 cubic yards of sediment into the North Fork Elk River and its tributaries. These discharges are associated with the Discharger's activities within the Elk River watershed.

Increased sediment deliveries to the North Fork Elk River coincides with the time period residents reported degraded water quality conditions and in-filling of the stream channel. Increases in sediment deliveries indicate a linkage between the Discharger's increased timber activities and increased degradation of stream conditions. Since the Discharger is responsible for

the construction of roads, landing and harvesting activities, the Discharger has caused or permitted discharges of sediment significantly greater than would be expected in the absence of timber harvest activities.

The sediment impairment in Elk River has also significantly reduced channel capacity, contributing to increased severity of flooding. The increased flooding threatens public health and safety, including homes, roads, and other structures. In addition, stream aggradation during the 1996-1997 winter had eliminated or significantly reduced fish habitat in this watershed.

To address impacts to drinking water supplies, the Regional Water Board issued Cleanup and Abatement Order (CAO) Nos. 97-115 and 98-100 to Pacific Lumber Company. These Orders required Pacific Lumber Company to clean up and abate the impacts of its discharge and to develop alternative permanent domestic and agricultural water supplies for affected residents to replace their damaged water supplies, which historically utilized the Elk River. Pacific Lumber Company is providing affected residents with water on an interim basis while developing and ultimately implementing long-term permanent water supplies for these residents. In a few cases permanent water supply systems have recently been constructed.

On February 11, 1998, the California Department of Forestry and Fire Protection (CDF) informed the Pacific Lumber Company that it had determined after discussions with representatives of the California Department of Fish and Game (DFG), the California Geological Survey (CGS), and the Regional Water Board, that the Elk River watershed had been significantly cumulatively impacted by sediment discharges.

Further, staff of the Regional Water Board, CDF, DFG, CGS, and members of the public observed and documented these impacts to beneficial uses. Agency representatives determined that timber harvest and related activities contributed significantly to the documented adverse impacts. Technical reports submitted by the Pacific Lumber Company in response to various orders, requirements, and requests by the staff of the Regional Water Board and CDF confirmed staff's earlier observations, demonstrating that timber harvesting and related activities were associated with increased landsliding and sediment generation and deliveries.

In a January 21, 1999 letter, CDF notified Pacific Lumber Company that residents in the Freshwater Creek and Elk River watersheds were experiencing an increased rate of flooding and sedimentation corresponding with the recent cycle of logging within those watersheds. To address the concerns of CDF and other agencies, CDF noted, in part, that THPs within the Elk River watershed must address the cumulative effects of timber harvesting on flooding and public safety. CDF noted that because flooding and sedimentation for this watershed occurs at the watershed scale, completed watershed analyses must be supplied for review, and Level II watershed analysis would be required.

Pacific Lumber Company has not yet complied with the requirements in CDF's 1999 letter and sediment impaired conditions continue in the Elk River watershed. However Pacific Lumber Company has proposed harvesting in this watershed at rates similar to or significantly higher than those employed prior to the 1995/1996 and 1996/1997 winters, which led to the previous and continuing impairment. As of January 1, 2002, there are 1,620 acres proposed for harvest in North Fork Elk River, comprising 12.3% of the ownership; there are currently 818 acres proposed for harvest in South Fork Elk River, comprising 10.2% of the ownership.

As Elk River THPs are reviewed, the Regional Water Board staff have consistently recommended implementation of low impact practices and project specific monitoring until the completion of a watershed analysis such as that described in CDF's 1999 letter. Pacific Lumber Company has not agreed with these recommendations and CDF has not supported Regional Water Board staff in these recommendations. Regional Water Board staff have filed letters of non-concurrence on all but one of the THPs CDF has recommended for approval. The absence of the non-concurrence for the one THP was an oversight by Regional Water Board staff.

CDF conducted a peak flow analysis for the Elk River watershed in an effort to model the predicted increase in peak flows resulting from harvesting. Based on this analysis, CDF is currently allowing the Pacific Lumber Company to harvest 600 clearcut equivalent acres annually. CDF has stated the 600 acre limitation is subject to change following the development of post-watershed analysis prescriptions. The Watershed Analysis process for Elk River is commencing and projections for release of a draft is November 2002.

The Discharger conducts water quality monitoring under its Habitat Conservation Plan (HCP) at several locations in its timberland holdings. This monitoring consists of physical and biological monitoring activities and is of value. However, these activities do not include monitoring for water quality objectives. Regional Water Board staff have issued a monitoring and reporting program, in the Elk River watershed, to facilitate development of the TMDLs, to assess compliance with water quality objectives, and to determine trends in water quality in these watersheds. Monitoring for specific water quality objectives is necessary to ensure that current and future timber harvest and related activities comply with the proposed waste discharge requirements or waiver and do not interfere with the recovery and protections of impaired beneficial uses. The Discharger has petitioned the monitoring and reporting program to the SWRCB for review.

To address the existing impacts in Elk River, the Regional Water Board issued CAO No. R1-2002-0085 to the Discharger. This CAO, dated August 1, 2002, required the Discharge to produce a workplan to conduct corrective work on roads, a report identifying options and preferred alternatives for road related and non-road related landslides, and an assessment of in-stream soil deposits including potential remediation alternatives. An implementation time schedule for each item was required as well. The Discharger has petitioned the CAO to the SWRCB for review.

### **HABITAT CONSERVATION PLAN (HCP)**

In February 1999, the Discharger signed the Implementation Agreement with state and federal wildlife agencies to implement the HCP prepared pursuant to the Federal Endangered Species Act (ESA). The HCP was not prepared nor designed to protect all the beneficial uses of water quality. There certainly is some overlap, however, protecting one beneficial use, cold water fisheries, does not address all the beneficial uses the Regional Water Board is charged with protecting. Further, the HCP allows for incidental take of a threatened or endangered species. The Porter-Cologne Water Quality Control Act and the Basin Plan do not permit an incidental take of beneficial uses i.e. all beneficial uses must be protected at all times.

The Implementation Agreement for the HCP states, in part, "notwithstanding any other provisions in this Agreement all activities undertaken pursuant to this Agreement, the HCP, or the Federal or State Permits must be in compliance with all applicable Federal and state laws and regulations,..." Thus, timber harvesting and related activities under the HCP and

Implementation Agreement in the Elk River watershed are subject to state laws and regulations, such as the Porter-Cologne Water Quality Control Act and the Basin Plan.

Pacific Lumber Company states that the existing interim prescriptions and other requirements of the HCP and the Forest Practice Rules provide added mitigation and adequate protection for any future impacts from its harvesting and related activities.

The HCP and Sustained Yield Plan (SYP) was developed for the Headwaters Forest Project, and completed in 1999. HCP "compliance monitors" periodically inspect selected timber harvesting plans to determine compliance with portions of the HCP/SYP. The compliance monitors summarize and report such findings quarterly and annually. The Compliance Monitoring 2001 Annual Report was released in March of 2002 and this office received a copy on April 9, 2002.

During the 2001 reporting period a total of 186 HCP compliance inspections were conducted. Non-Compliance Reports were filed for 50 of those inspections and "Risk" reports were filed on 30 of those inspections. The 186 inspections cover all aspects of the HCP. A subset of 138 HCP compliance inspections were conducted for aquatic sections of the HCP. Of these, there were 38 NCRs and 27 "Risk" reports. A "Risk" report is written when an HCP Monitor concludes that a non-compliance of a given HCP section may occur if Pacific Lumber Company continues to act, or fails to act, in the future.

#### **REPORT OF WASTE DISCHARGE**

As mentioned above, the Executive Officer issued a request for a ROWD on August 5, 2002 (Attachment 1). The ROWD is intended to address discharges and threatened discharges associated with operations proposed to be conducted in the Elk River watershed between October 15 and May 1 of each year, starting with October 15, 2002.

The ROWD addresses winter time operations for several reasons. First, there is evidence that winter operations produce sediment discharges. Second, the Regional Water Board has expressed their desire to resolve the issues surrounding the Pacific Lumber Company and the five impacted watersheds using several methods. These methods include the development of TMDLs, conducting monitoring programs, conducting cleanup and abatement activities, and convening a Scientific Review Panel. The Scientific Review Panel will be addressing cumulative impact issues such as an appropriate rate of harvest, landslide incidence, and peak flow runoff. Until the cumulative impact issues are resolved, it is appropriate to focus this ROWD on discharges and threatened discharges associated with operations between October 15 and May 1 of each year. As issues are resolved, it may become appropriate to amend the ROWD and revise the appropriate order or waiver at a future date.

The Discharger has submitted a ROWD for thirteen THPs that are planned to be harvested during the winter of 2002-2003. As discussed below, the tentative waste discharge requirements or waiver will be relying on the functional equivalent documents used to approve the THPs as CEQA documents under the CDF's THP review process. It is recognized that at the time of the writing of this report, not all of the THPs referenced in the ROWD have been approved by CDF. However, a portion of these unapproved THPs may be approved by CDF prior to the scheduled November 7, 2002, meeting. THPs that are not approved by CDF or that do not have a valid CEQA document will be removed from the tentative waste discharge requirements or waiver prior to adoption by the Regional Water Board.

**Table 3** below lists the THP number, the number of acres harvested, the pertinent prescriptions, and THP status.

THP Number	Harvested Acres	Silviculture	THP Status
1-00-030 HUM	191	CC 182 CT 9	Not App
1-00-115 HUM	101	CC 96 STR 5	Not App
1-00-215 HUM	7	CC 7	App
1-00-219 HUM	30	CC 20 CT 10	App
1-00-280 HUM	69	CC 69	Not App
1-00-370 HUM	64	CC 64	App
1-00-452 HUM	24	CC 24	App
1-01-003 HUM	148	STR 51 SHR 94 ROW 3	Not App
1-01-004 HUM	38	CT 38	App
1-02-090 HUM	107	CC 107	App
1-02-096 HUM	170	CC 170	Not App
1-02-102 HUM	32	ALT 25 STR 1 SHR 6	App
1-02-103 HUM	37	CC 37	Not App
Totals	1018	CC 776 SHR 100 CT 57 STR 52 ALT 25 ROW 3	
CC=Clearcut; SHR=Shelterwood Removal; CT=Commercial Thin; STR=Seed Tree Removal; ALT=Alternative; ROW=Right of Way; App=Approved.			

The ROWD proposes a number of wet weather mitigations, relying largely on the requirements of the HCP. Additional mitigations include proposals to: 1) apply seed and mulch to areas of bare mineral soil exposed during winter operations when they are larger than 1,000 square feet or are determined to be significant sources for sediment discharge, 2) limit broadcast burning to only those areas where logging slash will inhibit tree planting, 3) identify and use the transportation system and route that is feasible yet most protective of water quality, 4) identify and regularly inspect sensitive road segments, and 5) apply erosion prevention or sediment control devices in drainage facilities that discharge or could discharge sediment to receiving waters. Staff have requested further detail regarding these proposals. In addition, at the time of this writing, a number of necessary components have not been submitted. Therefore, at this time, the ROWD is incomplete.

## **CALIFORNIA ENVIRONMENTAL QUALITY ACT**

The program for regulating timber harvesting activities has special status under CEQA. Like the Basin Planning process, the timber harvest planning program is designated by the Secretary of the Resources Agency as a certified regulatory program. This designation signifies that the regulatory process serves as an equivalent to the more traditional CEQA compliance process, which involves the preparation of a negative declaration or environmental impact report. Instead of requiring either of those two environmental documents, a certified regulatory program involves the preparation of a “functional equivalent document” (FED).

Within the program for regulating timber harvesting activities, CDF consults with agencies such as the California Department of Fish and Game, Regional Water Boards, the California Geological Survey, the National Marine Fisheries Service, the US Fish and Wildlife, on proposed THPs. As the lead agency, CDF either accepts or rejects submitted comments, produces an official record for each THP, decides whether to approve or deny a THP, and certifies the THP as a functional equivalent document (FED) for THPs that are approved.

During the consultation process, Regional Water Board staff have the opportunity to provide comments on the treatment of water quality impacts in a THP. Specifically, when they, in their professional judgement, find that a THP recommended for approval by the CDF Second Review Team Chairperson will have an adverse impact on water quality and beneficial uses, they can officially document their disagreement by filing a letter of non-concurrence. Each year, Regional Water Board staff file non-concurrence letters on approximately 5% of the total number of THPs submitted. Many recent non-concurrences have been filed on THPs submitted by the Pacific Lumber Company, including most of the THPs to be conducted in the Elk River watershed over the 2002-2003 winter period.

Regardless of these non-concurrences filed by Regional Water Board staff, CEQA constrains the discretion of the Regional Water Board to require additional analysis. Once a lead agency has approved a final environmental document, dissatisfaction with the analysis does not by itself provide a basis for requiring additional environmental documentation. Only when certain types of previously unavailable information comes to light is such additional work necessary. Such information is not present in the case of the Elk River THPs and therefore the Regional Water Board cannot require additional environmental analysis under CEQA.

The Regional Water Board must rely on the approved THPs as a basis for complying with CEQA in connection with the approval of waste discharge requirements on the proposed timber harvesting activities.

## **WASTE DISCHARGE REQUIREMENTS**

The Basin Plan’s Guidelines for Implementation and Enforcement of Discharge Prohibitions Relating to Logging, Construction, and Associated Activities state:

“The Regional Water Board considers that implementation of the discharge prohibitions relating to logging, construction, or associated activities can provide appropriate protection to waters of the region from these sources of waste and, in the great majority of their activities, will waive the need for reports of waste discharge and waste discharge requirements. However, where investigations indicate that the beneficial uses of waters may be adversely affected by waste discharges, the staff shall require the submission of Reports of Waste Discharge.”

The Discharger's past and proposed discharges into the Elk River and its tributaries have and will likely continue to adversely affect the beneficial uses thereof; therefore, the August 5, 2002, ROWD request letter is consistent with the directives of the Basin Plan.

The Discharger is currently proposing to engage in new activities within the Elk River ownership which will result in additional discharges and threatened discharges of sediment to the Elk River and its tributaries, causing further impairment of the beneficial uses of those waters than what has already occurred as a result of Discharger's timber harvesting and related activities. Thus, the adoption of waste discharge requirements is appropriate.

After conducting the public hearing and consideration of comments from the Discharger, the public and other governmental agencies, the Regional Water Board has the option of issuing waste discharge requirements, issuing a waiver of waste discharge requirements, or not issuing either order.

PRELIMINARY STAFF  
RECOMMENDATION:

Adoption of Waste Discharge Requirements as proposed.